
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 395 Session of
2000

INTRODUCED BY FEESE, BAKER, CAPPABIANCA, CAWLEY, CIVERA, CLARK,
CLYMER, FAIRCHILD, FLICK, GANNON, GEIST, HENNESSEY, KENNEY,
MAJOR, MARSICO, MASLAND, NAILOR, NICKOL, ORIE, PHILLIPS,
ROSS, SATHER, SCHRODER, SCHULER, S. H. SMITH, STERN,
STEVENSON, E. Z. TAYLOR, TIGUE AND WILT, MARCH 14, 2000

REFERRED TO COMMITTEE ON RULES, MARCH 14, 2000

A RESOLUTION

1 Directing the Ethics Committee to conduct an investigation and
2 to make a report recommending amendments to the Rules of the
3 House of Representatives concerning the establishment of
4 procedures for the expulsion of members subject to section 7
5 of Article II of the Constitution of Pennsylvania and the
6 appropriate definition of certain terms.

7 WHEREAS, In *Sweeney v. Tucker*, 22 PA. Commonwealth Ct. 642
8 (1976), the Commonwealth Court was presented with a case in
9 which Leonard E. Sweeney, a former member of the Pennsylvania
10 House of Representatives, and two of his former constituents of
11 the Seventeenth Legislative District filed a complaint in equity
12 against the Comptroller of the House of Representatives, two
13 high officers of the Commonwealth and three members of the
14 House. The plaintiffs claimed that Mr. Sweeney's expulsion from
15 membership in the House violated his asserted constitutional
16 right to his House seat and to payment of salary and of the
17 plaintiff-constituents' right to be represented in the House;
18 and

1 WHEREAS, Mr. Sweeney's complaint averred that Mr. Sweeney was
2 elected to represent the Seventeenth Legislative District on
3 November 5, 1974. He took the oath of office and was seated on
4 January 7, 1975. On January 10, 1975, Mr. Sweeney was indicted
5 by a grand jury of the United States District Court for the
6 Western District of Pennsylvania on one count of conspiracy to
7 commit mail fraud and five counts of mail fraud. On July 30,
8 1975, a trial jury found Mr. Sweeney guilty of three counts of
9 mail fraud. On the same day the District Court Trial Judge
10 entered judgments of sentence against Mr. Sweeney of
11 imprisonment and to pay fines and costs. Mr. Sweeney filed a
12 timely appeal from the judgments of sentence to the Third
13 Circuit Court of Appeals. Mr. Sweeney did not resign his seat in
14 the House; and

15 WHEREAS, On August 18, 1975, the House Ethics Committee
16 notified Mr. Sweeney that it would meet and discuss his status
17 as a member of the House on August 25, 1975, inviting him to
18 attend in person or with or by counsel. The Ethics Committee,
19 after its meeting, at which neither Mr. Sweeney nor his counsel
20 appeared, concluded that its jurisdiction was limited to
21 violations of the Legislative Code of Ethics and House Rules and
22 made no recommendation to the House. The House met in Special
23 Session to consider action on Mr. Sweeney's status on August 27,
24 1975. Again, neither Mr. Sweeney nor anyone for him appeared.
25 After entering into its records Mr. Sweeney's indictments and
26 the judgments of sentence against him, the House, by vote of 176
27 in favor and 1 against, adopted the following resolution:

28 "WHEREAS, Representative Leonard E. Sweeney was tried and
29 convicted by the court and a jury in the United States
30 District Court for the Western District of Pennsylvania
31 for violation of Title 18, United States Code, Section
32 1341; and

1 WHEREAS, Sentence pursuant to a finding of guilty was
2 imposed by the court on July 30, 1975; and
3 WHEREAS, Pursuant to Article II, Section 9 of the
4 Constitution of the Commonwealth of Pennsylvania the
5 House of Representatives has the exclusive power and
6 authority to judge the qualifications of its members;
7 therefore be it
8 RESOLVED, That pursuant to the powers granted to the
9 House of Representatives under Article II, Section 9 and
10 Section 11 of the Constitution of the Commonwealth of
11 Pennsylvania, the House of Representatives does hereby
12 expel Leonard E. Sweeney as a member of the House of
13 Representatives of Pennsylvania; and"

14 WHEREAS, The Speaker of the House thereupon declared that a
15 vacancy existed in the office of Representative for the
16 Seventeenth Legislative District and issued a writ calling for
17 special election on November 4, 1975. A writ of election was
18 duly forwarded to the Secretary of the Commonwealth and a
19 special election to fill the vacancy was conducted on November
20 4, 1975; and

21 WHEREAS, Mr. Sweeney filed his complaint in the Commonwealth
22 Court on September 24, 1975, naming as defendants the following
23 persons, holding the indicated State offices or House positions:
24 C. DeLores Tucker, Secretary of the Commonwealth; Grace M.
25 Sloan, Treasurer of the Commonwealth; Herbert Fineman, Speaker
26 of the House; K. LeRoy Irvis, Majority Leader of the House;
27 Samuel Rappaport, Chairman of the House Ethics Committee; and
28 Jean Francis, Comptroller of the House; and

29 WHEREAS, The Commonwealth Court ultimately decided that the
30 issue of the expulsion of a member was, by section 11 of Article
31 II of the Constitution of Pennsylvania, committed to the
32 exclusive power of the Houses of the General Assembly and that
33 it was not justiciable. Mr. Sweeney thereafter filed a timely
34 appeal to the Pennsylvania Supreme Court; and

35 WHEREAS, In Sweeney v. Tucker, 473 Pa. 493 (1977), the
36 Supreme Court was presented with the appeal by Mr. Sweeney to

1 the Commonwealth Court decision. Although the Supreme Court
2 affirmed the decision of the Commonwealth Court, the court held
3 that, among other things:

4 (1) House rules with respect to proceedings before
5 ethics committee had no application where the committee
6 concluded that it had no jurisdiction and made no
7 recommendation to the House.

8 (2) The action was moot as to reinstatement and special
9 election where the member's term had already expired at time
10 of oral argument before the Supreme Court, but back pay claim
11 was not moot.

12 (3) The action against the House Comptroller for back
13 pay was not barred by the speech or debate clause of the
14 Constitution of the Commonwealth of Pennsylvania.

15 (4) Procedures employed by the House in expelling a
16 member can be reviewed by the courts when it is alleged that
17 the House action violated that member's right to procedural
18 due process.

19 (5) Even if Mr. Sweeney's interest in his office was a
20 property interest entitled to procedural protections, his due
21 process rights were not violated when he was expelled upon
22 vote of more than two thirds of the members of the House
23 following the Federal mail fraud conviction and upon adequate
24 notice of the impending House action; and

25 WHEREAS, The Supreme Court in its discussion of the threshold
26 issue of whether a member facing expulsion was to be accorded
27 procedural due process decided that:

28 (1) Where the text of the Constitution does not
29 unambiguously commit the procedures used in expulsion
30 exclusively and finally to the House, the court was not

1 inclined to construe the Constitution to bar judicial review
2 of a claimed denial of due process.

3 (2) Legislative procedures are subject to judicial
4 scrutiny citing Commonwealth ex rel. Carcaci v. Brandamore,
5 Pa. 48, (1974) in which an individual who refused to answer
6 questions at the bar of the House of Representatives and was
7 imprisoned pursuant to a House Resolution holding him in
8 contempt, asserted that the procedures by which the House
9 held him in contempt did not satisfy due process. Mr. Justice
10 Pomeroy, writing for a majority of the Court, stated: "Of
11 course, the manner in which a legislative body exercises its
12 inherent power to vindicate its authority and processes must
13 satisfy the requirements of procedural due process."

14 (3) The State courts play a crucial role in enforcing
15 constitutional rights. Indeed, the Supreme Court specifically
16 held that the Pennsylvania Constitution does not bar judicial
17 review of a claim that legislative action expelling a member
18 from his seat violated his Federal constitutional rights; and
19 WHEREAS, Although the Supreme Court decided that a member
20 subject to an expulsion resolution should be afforded procedural
21 due process, the Court was silent as to what due process such a
22 member should be afforded; and

23 WHEREAS, Section 7 of Article II of the Constitution of
24 Pennsylvania states "No person hereafter convicted of
25 embezzlement of public moneys, bribery, perjury or other
26 infamous crime, shall be eligible to the General Assembly, or
27 capable of holding any office of trust or profit in this
28 Commonwealth;" and

29 WHEREAS, This House is currently presented with a situation
30 in which sitting members may be subject to the prohibition from

1 public office contained with section 7 of Article II; and

2 WHEREAS, Understanding that the prohibition against public
3 office within section 7 of Article II is absolute, a
4 determination must be made concerning the definition of certain
5 terms in that section and the effect of a subsequent successful
6 appeal from a criminal conviction on a member facing an
7 expulsion resolution; and

8 WHEREAS, The guidance from the judicial branch indicates that
9 procedural due process must be afforded to a member facing an
10 expulsion resolution and that a determination of exactly what
11 satisfies due process should be made by the House membership
12 through its rules; and

13 WHEREAS, The Commonwealth Court in *Sweeney v. Tucker*,
14 understanding the necessity that the House of Representatives is
15 the only forum for creating and deciding issues concerning the
16 due process to be afforded to a member under consideration for
17 expulsion, concluded "Nothing is more important to the continued
18 health of our American constitutional system than that each of
19 the three branches of our Federal and State governments refrain
20 from intermeddling or interfering in matters committed by the
21 people to other branches;" and

22 WHEREAS, The Supreme Court in its consideration of the matter
23 of *Sweeney v. Tucker* recognized that section 11 of Article II of
24 the Constitution of Pennsylvania grants each House of the
25 Legislature the "power to determine the rules of its
26 proceedings;" and

27 WHEREAS, In its decision the Supreme Court stated: "In light
28 of the express procedural limitations imposed on certain
29 legislative functions, it is not impossible to infer from the
30 absence of such limitations on the expulsion power that the

1 Framers intended to leave those procedures exclusively to the
2 discretion of each House. This inference is supported as well by
3 the two-thirds vote requirement for expulsion, which protects an
4 individual legislator's rights. In addition, this Court's review
5 of the internal operating procedures of the Legislature is
6 arguably an undue intrusion in the affairs of a coordinate
7 branch;" and

8 WHEREAS, The Supreme Court went on further to hold that it
9 was "persuaded that the procedures employed by the House in
10 expelling a member have not been exclusively committed to that
11 body by the Pennsylvania Constitution and can be reviewed by the
12 courts when it is alleged the House action violated a member's
13 right to procedural due process;" and

14 WHEREAS, If the House fails to act in establishing its own
15 rules concerning the due process to be afforded a member, or
16 members, subject to an expulsion resolution, the courts of this
17 Commonwealth are likely to establish such due process rules for
18 the House; therefore be it

19 RESOLVED, That the House of Representatives direct the Ethics
20 Committee to conduct an investigation and prepare a report to
21 the House proposing appropriate amendments to the Rules of the
22 House:

23 (1) To establish procedures for members putatively
24 subject to expulsion under section 7 of Article II of the
25 Constitution of Pennsylvania.

26 (2) To address the issues of establishing the definition
27 of terms applicable to these procedures; and be it further

28 RESOLVED, That, in furtherance of the Ethics Committee
29 investigation and report, the committee may conduct hearings,
30 take testimony and hire consultants, as needed; and be it

1 further

2 RESOLVED, That the Ethics Committee complete its
3 investigation and deliver its report to the membership of the
4 House by May 31, 2000.